

ATTACHMENT 8

STANDARD AGREEMENT

STD. 213 (NEW 06/03)

AGREEMENT NUMBER

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTOR'S NAME

To be completed by Commission

2. The term of this Agreement is: To be completed by Commission

3. The maximum amount of this Agreement is: \$ To be completed by Commission

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	Pages
Exhibit B – Budget Detail and Payment Provision	Pages
Exhibit C* – General Terms and Conditions	GTC 307
Exhibit D – Special Terms and Conditions	Pages
Exhibit E – Additional Provisions	Pages
Exhibit F – Contacts	Page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

**California Department of General
Services Use Only**

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

To be completed by Commission

BY (Authorized Signature)

✕

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

To be completed by Commission

STATE OF CALIFORNIA

AGENCY NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

BY (Authorized Signature)

✕

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Cheryl Raedel, Contracts Office Manager

ADDRESS

1516 Ninth Street, Sacramento, CA 95814

☐ Exempt per:

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EXHIBIT A

SCOPE OF WORK

PURPOSE

The purpose of this Agreement is

TASK 1

TITLE

Task Description....

Deliverables and due dates...

EXHIBIT B

Budget Detail and Payment Provision

1. **INVOICING PROCEDURES:**

A. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate Contractor for actual allowable expenditures incurred in accordance with the rates specified in this Exhibit B. The rates in Exhibit B are rate caps, or the maximum amount allowed to be billed. Contractor can only bill for actual expenses incurred for hours worked at the Contractor's actual direct labor, fringe, and indirect rates, not to exceed the rates specified in Exhibit B.

B. Invoices shall be submitted in duplicate not more frequently than monthly. The following certification shall be included on each invoice and signed by an authorized official of the Contractor:

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a Government Entity contract, subcontract or other procurement method.

C. The Energy Commission will accept computer generated or electronically transmitted invoices provided Contractor sends a hard copy the same day to the Energy Commission, the address is noted below and in Agreement Contact List.

California Energy Commission
Accounting Office, MS-2
1516 9th Street
Sacramento, California 95814

D. A request for payment shall consist of, but is not limited to, the following.

- 1) Agreement number, date prepared, and billing period.
- 2) Contractor's actual hourly labor rates by individual.
- 3) Operating expenses, e.g., equipment, travel, and miscellaneous, as well as receipts for those expenses.
- 4) Copy of subcontractor invoices. Identify on invoice summary page if subcontractor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise and identify the total for current billing period.
- 5) Fees (fringe, direct and indirect overheads, general and administrative, profit, etc.)

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- 6) Match fund expenditures, if applicable.
- 7) Invoices shall identify charges by tasks, personnel, labor rates and hours, and expenses authorized by this Agreement

E. As detailed in Exhibit A, Scope of Work:

- 1) A report that documents the progress of the work during the billing period, if applicable.
- 2) Any other deliverables due during the billing period.

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

3. **TRAVEL AND PER DIEM RATES:** Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented state employees. Contractor must pay for travel in excess of these rates. Contractor may obtain current rates from the Energy Commission's Web Site at www.energy.ca.gov/contracts/index.html.

4. **RETENTION:** The Energy Commission shall retain from each invoice ten per cent (10%) of that invoice, excluding equipment invoices. The retained amount shall be held and released only upon approval that the work has been satisfactorily completed and Final Report (if required) has been received and approved. Contractor must submit a separate invoice for the retained amount.

Retention may be released upon completion of tasks that are considered separate and distinct, i.e., the task is a stand-alone piece of work and could be done without the other tasks. The Budget will identify the tasks for which retention may be released prior to the end of the Agreement. Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks.

5. **PAYMENT TERMS:**

Check all that apply:

- ☐ Monthly
- ☐ Quarterly
- ☐ One-Time Payment
- ☐ Itemized
- ☐ Flat Rate
- ☐ In Arrears
- ☐ Advance Payment to Public Prime Contractor Not to Exceed \$ _ or ____ % of the Agreement Amount
- ☐ Advance Payment to Private Prime Contractor for Public Subcontractor, (PRC section 25620.3(d)) Not to Exceed \$ _____ or ____% of the Subcontract Amount
- ☐ Reimbursement/Revenue
- ☐ Other (Explain)

6. **CONDITIONS:**

- A. No payment shall be made in advance of services rendered.
- B. Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, Contractor will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice.
- C. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927.
- D. Final invoice must be received by the Energy Commission no later than 30 calendar days after the Agreement termination date.
- E. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Energy Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.
- F. Reimbursement for costs identified in Contractor invoices has not and will not be received from any other sources, including but not limited to a Government Entity contract or subcontract or other procurement method.

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7. **BUDGET REALLOCATIONS**

Contract Manager may move up to 10% of the total Agreement amount between tasks, line items or categories without formal amendment, by providing written notice with the revised budget to Contractor and Contract Officer.

8. **BUDGET DETAIL**

To be completed by Commission

EXHIBIT C

GENERAL TERMS AND CONDITIONS

PLEASE NOTE: The General Terms and Conditions will be included in the Agreement by reference to internet site: www.dgs.ca.gov/contracts, choose **Standard Language for Use in Standard Agreements or if this Agreement is with another State agency, choose Interagency Agreement**. The exact terms to be used will be those appearing on the website the date the Agreement is signed by Contractor.

EXHIBIT D

Special Terms and Conditions

1. **CONTRACT MANAGEMENT:**

- A. Contractor may change Project Manager but the Energy Commission reserves the right to approve any substitution of the Project Manager.
- B. The Energy Commission may change the Contract Manager at any time and will send a written notice to the Contractor signed by the Contract Officer.
- C. Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Energy Commission Contract Manager. In this connection, Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Energy Commission personnel for the performance of services, which are the responsibility of Contractor unless the Contract Manager previously agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.

2. **STANDARD OF PERFORMANCE:**

Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Energy Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply. Nothing contained in this section is intended to limit any of the rights or remedies which the Energy Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.

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- B. The Energy Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Energy Commission directs the Contractor not to reperform a task; the Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

3. **SUBCONTRACTS:**

Contractor shall enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

OR

No Subcontractors are named for this Agreement. If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and Contractor shall manage the performance of the subcontractors.

AND

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of, the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Energy Commission staff, and submitting completed products to the Contract Manager.

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- C. All subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C); 2) further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the Contract Manager; and the confidentiality provisions in the Reports paragraph of this Agreement.

D. Additions, Removal or Substitutions of Subcontractors

The Energy Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Energy Commission or Contractor requires the replacement or addition of subcontractor(s), the subcontractor(s) shall be selected using 1) A competitive bid process conducted in conformance with the State's and the Energy Commission's procedures for competitive bids. For example, awards shall be made to the lowest bidder meeting the requirements of the bid document and obtaining a minimum of three bids. Contractor's competitive bid process shall be approved by the Contract Manager and Contract Officer prior to release of the bid document. 2) The Energy Commission may direct Contractor to sole source a subcontract with a specific firm, once the Contract Manager has obtained sole source approval via the Energy Commission's internal procedures. The Contract Manager shall provide justification for the sole source subcontract to the Contracts Officer using the "Subcontractor Add" memo described below.
- 2) The Contract Manager shall complete and submit to the Contract Officer a "Subcontractor Add" memo. This memo identifies the new subcontractor and what bidding method was used to obtain subcontractors (competitive or sole source).
- 3) Contractor shall submit any proposed subcontracts not originally identified in Contractor's bid, or any substitution of subcontracts to the Energy Commission for its approval prior to Contractor entering into it. Upon the termination of any subcontract, the Contract Manager shall be notified immediately.

E. Disabled Veteran Business Enterprise (DVBE) Changes

The Contractor shall use the DVBE companies identified in its bid or in any certifications identifying DVBE to be used in this Agreement. Contractor's failure to adhere to the DVBE participation may be cause for termination. In the event a replacement of a DVBE is necessary, the

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Contractor shall request written approval, in advance, from the Contract Manager and the Contract Officer. The procedure for replacing any DVBE is:

- 1) Contractor shall inform Contract Manager and Contract Officer in writing of the reason for the DVBE replacement.
- 2) Contractor shall attempt to replace the DVBE with a new DVBE providing the same services or identify other services in the Agreement a new DVBE could provide. Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE. If replacement is not a DVBE, Contractor shall complete steps in compliance with good faith efforts and submit appropriate DVBE documentation to the Contract Officer

4. **PERFORMANCE EVALUATION:**

Consistent with Public Contract Code Sections 10367 through 10371, the Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Energy Commission and the DGS defending his or her performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.

5. **REPORTS:**

- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.
- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:

California Energy Commission
Project Title
Contractor Number
By (Contractor)

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- C. **Ownership:** Each report shall become the property of the Energy Commission.
- D. **Non-disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Contract Manager, except as provided in F, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Contract, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- E. **Confidentiality:** No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the Contract Manager, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Contract Manager or Contract Officer. Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.
- F. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

"LEGAL NOTICE"

"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in

this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."

6. CONTRACT DATA, OWNERSHIP RIGHTS:

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has

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been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Energy Commission of the Final Report herein.

- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

7. **PUBLIC HEARINGS:**

If public hearings on the scope of work are held during the period of the Contract, Contractor will make available to testify the personnel assigned to this Agreement. The Energy Commission will reimburse Contractor for compensation and travel of the personnel at the Contract rates for the testimony which the Energy Commission requests.

8. **DISPUTES:**

In the event of a Contract dispute or grievance between Contractor and the Energy Commission, both parties shall follow the following two-step procedure. Contractor shall continue with the responsibilities under this contract during any dispute.

A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer decision, the Contractor may appeal to the second level.

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The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Energy Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Energy Commission of the decision at an Energy Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Energy Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on an Energy Commission Business Meeting Agenda.

B. Binding Arbitration

Should the Energy Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;

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- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

9. **TERMINATION:**

The parties agree that because the Energy Commission is a state entity and contracts on behalf of all Californian rate payers, it is necessary for the Energy Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Energy Commission under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Energy Commission, the Energy Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

This Agreement may be terminated for any reason set forth below.

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or

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- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Energy Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Energy Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Energy Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

10. **WAIVER:**

No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

11. **CAPTIONS:**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

12. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE:**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

13. **NOTICE:**

Legal notice must be given using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this clause. This clause is not intended to apply to normal, daily communication between the parties related to progress of the work. This clause applies to situations where notice is required to be given by this Agreement or the parties are asserting their legal rights and remedies.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed until the next business day.

14. **STOP WORK:**

The Contract Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

- A. Compliance. Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. Revoking a Stop Work Order. Contractor shall resume the stopped work only upon receipt of written instructions from the Energy Commission Contract Officer canceling the stop work order.

15. **INTERPRETATION OF TERMS:**

This Agreement shall be conducted in accordance with the terms and conditions of the solicitation, if applicable. The Contractor's bid is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or bid, this Agreement shall be considered controlling.

16. **AMENDMENTS:**

This Agreement may be amended to make changes, including without limitation; additional funds, additional time, additional or modified tasks, and additional or modified terms. Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to Public Contract Code section 10335, Government Code section 11010.5 and the State Contract Manual.

EXHIBIT E

Additional Provisions

1. **CONFIDENTIALITY**

A. Information Considered Confidential

If applicable, all Contractor information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission Contracts Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

D. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

2. **BID INTERPRETATION:** This project shall be conducted in accordance with the terms and conditions of the Commission's Invitation for Bid, number 400-08-401, titled, Revenue Bond Accounting & Auditing Services, Contractor's bid dated _____ and this Agreement. The Contractor's bid is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's bid, this Agreement shall be considered controlling.

3. **RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART:**

The Contractor; by signing this Agreement, expressly grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

Contractor, by signing this Agreement, expressly conveys to the Energy Commission all ownership of the physical works of art and fine art produced under this Agreement. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Agreement.

Contractor shall obtain these same rights for the Energy Commission from all subcontractors and others who produce copyrightable material, works of art, or works of fine art under this Agreement. Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Energy Commission from the subcontractor.

4. **CONFLICT OF INTEREST:**

- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall inform the Contract Manager as soon as a question arises about whether a potential conflict may exist. The Contract Manager and Commission's Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission's Chief Counsel's Office determines that there is a potential conflict of interest.

EXHIBIT F

NAMES AND ADDRESSES OF AGREEMENT REPRESENTATIVES

Commission Contract Manager: NAME, MS- California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) Fax: (916) e-mail: @energy.state.ca.us	Contractor Project Manager: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Commission Contract Officer: Lori Tomita, MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654-5833 Fax: (916) 654-4423 e-mail: ltomita@energy.state.ca.us Deliver confidential deliverables to this location only.	Contractor Contract Officer: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Invoices, Progress Reports and Non-Confidential Deliverables to: Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4401 Fax: 916-653-1435 e-mail: awilliams@energy.state.ca.us	
Legal Notices: Cheryl Raedel, MS-18 Manager, Contracts Office California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4392 Fax: 916-654-4423 e-mail: craedel@energy.state.ca.us	(contractor legal person)